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7 CITY OF MANHATTAN BEACH; OFFICER

MICHAEL LYNCH; AND OFFICER B. MUZATKO

9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

11
12 FERREOL CARDENAS, SR.,
13 Individually, and as the Personal
14 Representative for FERREOL
CARDENAS, JR., Deceased, and
ROSA CARDENAS,

15 Plaintiffs,

16 v.

17 CITY OF MANHATTAN BEACH,
18 MANHATTAN BEACH POLICE
19 OFFICER MICHAEL LYNCH (Serial
20 No. 313), MANHATTAN BEACH
POLICE OFFICER B. MUZATKO
(Serial No. 342), and Does 1 through
10, inclusive,

21 Defendants.

Case No. 2:15-CV-1469-JPR

[Hon. Mag. Judge Jean P. Rosenbluth]

**STIPULATION FOR PARTIAL
DISMISSAL OF CLAIMS**

[Proposed Order filed concurrently
herewith]

Complaint Filed: 03/01/2015

Trial Date: N/A

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24 **TO THE HONORABLE COURT:**

25 By and through their counsel of record in this action, plaintiffs FERREOL
26 CARDENAS, SR., Individually, and as the Personal Representative for FERREOL
27 CARDENAS, JR., Deceased, and ROSA CARDENAS (“Plaintiffs”) and defendant
28 CITY OF MANHATTAN BEACH (“City” or “Defendant(s)”) – the parties – hereby

1 stipulate for the purpose of jointly requesting that the honorable Court dismiss with
2 prejudice certain causes of action and/or claims therein, as follows.

3 **GOOD CAUSE STATEMENT.**

4 1. Pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii), a plaintiff may
5 dismiss an action without a court order by filing a stipulation of dismissal signed by all
6 parties who have appeared.

7 2. Defendants contend that plaintiffs lack standing to bring their Fifth Cause
8 of Action brought pursuant to the Bane Action (Cal. Civ. Code § 52.1). [*See, e.g., Bay*
9 *Area Rapid Transit Dist. [BART] v. Superior Ct.*, 38 Cal. App. 4th 141, 145 (1995);
10 *accord City of Simi Valley v. Superior Ct.*, 111 Cal.App.4th 1077, 1085-1086 (2003).]
11 Plaintiffs do *not* agree with this contention. However, to avoid the need for the parties
12 and the Court to address this issue by motion, the parties have agreed to the stipulation
13 as expressed herein under.

14 3. Defendants further contend that plaintiffs cannot bring their Seventh Cause
15 of Action under California law titled "Police Negligence" against *all* Defendants, as
16 pled, because public entities are immune from suit for their own alleged negligence
17 regarding the conduct of their peace officers (*e.g.*, immune from negligent supervision,
18 training, hiring, discipline, and comparable claims). Rather, although public entities are
19 immune from direct negligence claims related to their peace officers, under California
20 law, public entities may be vicariously liable for the on-duty negligence of their peace
21 officers. [*See, e.g., Zelig v. County of Los Angeles*, 27 Cal.4th 1112, 1127-1128, 1131-
22 1141 (2002); *Eastburn v. Regional Fire Protection Auth.*, 31 Cal.4th 1175, 1179-1180,
23 1183 (2003); *de Villers v. County of San Diego*, 156 Cal.App.4th 238, 251-253, 255-
24 256 (2007); *Munoz v. City of Union City*, 120 Cal.App.4th 1077, 1101-1103, 1113
25 (2004).] Thus, Defendants contend that, under California law, the City cannot be a
26 direct liability defendant to a negligence claim. Plaintiffs do *not* agree with this
27 contention. However, to avoid the need for the parties and the Court to address this
28 issue by motion, the parties have agreed to the stipulation as expressed herein under.

4. After conference of counsel on April 4 and 13, 2015 and May 1, 2015 and thereafter, pursuant to U.S. Dist. Ct., C.D. Cal. L.R. 7-3 and 37-1, in light of the foregoing and in the interests of justice, the parties hereby stipulate to dismiss those portions of plaintiffs' claims as specified herein below.

STIPULATION FOR PARTIAL DISMISSAL.

5. The parties hereby stipulate to, and respectfully request that the Court issue an appropriate Order giving effect to, the following *dismissals with prejudice* to part of plaintiffs' claims in this action:

6. Plaintiffs hereby stipulate to **dismiss with prejudice** plaintiffs' Fifth Cause of Action – a **Bane Act claim** brought pursuant to Cal. Civ. Code § 52.1 by plaintiffs FERREOL CARDENAS, SR., Individually, and as the Personal Representative for FERREOL CARDENAS, JR., Deceased, and ROSA CARDENAS against defendants the CITY OF MANHATTAN BEACH, Manhattan Beach Police Officer MICHAEL LYNCH, Manhattan Beach Police Officer B. MUZATKO, and defendants Does 1-10 – **in its entirety** and as to all defendants to this action.

7. With regard to plaintiffs' Seventh Cause of Action – a **Police Negligence** claim brought pursuant to California law by plaintiffs FERREOL CARDENAS, SR., Individually, and as the Personal Representative for FERREOL CARDENAS, JR., Deceased, and ROSA CARDENAS against defendants the CITY OF MANHATTAN BEACH ("City"), Manhattan Beach Police Officer MICHAEL LYNCH, Manhattan Beach Police Officer B. MUZATKO, and defendants Does 1-10 – to the extent such claim appears to allege a claim for *direct* negligence by the City, a public entity, plaintiffs hereby **dismiss with prejudice** any claim for liability based on the alleged negligence of the City. Plaintiffs further hereby stipulate to **dismiss with prejudice and strike** the following language from its operative complaint (¶ 57, page 12, lines 1-5): STRIKING "Defendant City of Manhattan Beach, through the Manhattan Beach Police Department, breached its mandatory duty by failing to adequately train and supervise its police officers in the risks of and use of ECDs, as well as the use of force

1 with respect to the restraint, apprehension and detention of individuals such as the
2 Decedent."

3 8. Nothing in this Stipulation or any associated Order shall be construed as
4 any dismissal of defendant CITY OF MANHATTAN BEACH from the Seventh Cause
5 of Action on the basis of *vicarious* liability for the alleged negligence of its defendant
6 peace officers. Nothing in this Stipulation or any associated Order shall be construed as
7 any dismissal of plaintiffs' Fourth Cause of Action against defendant City – a *Monell*
8 Claim brought pursuant to 42 U.S.C. § 1983 against defendant City regarding alleged
9 constitutionally deficient supervision, training, investigation, and discipline regarding
10 the use of force in such a manner as to result in the use of excessive force on plaintiffs'
11 Decedent.

12 9. Except as specifically stated herein above, nothing in this Stipulation or
13 any associated Order shall be construed as dismissing any other claims or causes of
14 action brought by any other plaintiffs named in the most recent operative Complaint on
15 file in this action prior to the filing date of this Stipulation.

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1 10. This Stipulation may be signed in counterpart and a facsimile or electronic
2 signature shall be as valid as an original signature.

3 **IT IS SO STIPULATED.**

4 DATED: May 4, 2015

**MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP**

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8 By: /s/ Tony M. Sain
9 Mildred K. O'Linn, Esq.
10 Tony M. Sain, Esq.
11 Attorneys for Defendant(s),
12 CITY OF MANHATTAN BEACH;
13 OFFICER MICHAEL LYNCH; AND
14 OFFICER B. MUZATKO

15 DATED: May 4, 2015

WILLIAMSON LAW FIRM

17 By: /s/ Peter M. Williamson
18 Peter M. Williamson, Esq.
19 Attorneys for Plaintiffs,
20 FERREOL CARDENAS, SR.,
21 Individually, and as the Personal
22 Representative for FERREOL
23 CARDENAS, JR., Deceased, and ROSA
24 CARDENAS
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